

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FORT SMITH DIVISION

ROBERT JOHNSON

PLAINTIFF

v.

Civil No. 05-2136

CITY OF FORT SMITH, ARKANSAS;  
THE FORT SMITH AIRPORT COMMISSION;  
WILLIAM STRANDELL, individually;  
JOHN R. DALLAS, individually;  
THE UNITED STATES OF AMERICA;  
WILLIAM HARDING, individually;  
JOHN POLINSKY, JR., individually;  
R. MARK HORN, individually;  
KENNETH PYLE, individually;  
GARY W. CAMPBELL, individually;  
COLE GOODMAN, individually;  
JERRY R. STEWART, individually;  
JOSEPH HERMANN, individually;  
RICK DERAMUS, individually,

DEFENDANTS

O R D E R

NOW on this 9th day of August, 2006, the above referenced matter comes on for this Court's consideration of **Plaintiff's Motion to Permit Filing of First Amended Complaint (document #37)** and **Plaintiff's Amended Motion to Permit Filing of First Amended Complaint (document #44)**, and the various responses thereto. Having reviewed the pleadings of the parties, and all other matters of relevance before it, the Court, being well and sufficiently advised, finds and orders as follows:

1. Plaintiff Robert A. Johnson filed this action against the City of Fort Smith, Arkansas, the Fort Smith Airport Commission, William Strandell, John R. Dallas, the United States of America, William Harding, John Polinsky, Jr., R. Mark Horn,

Kenneth Pyle, Gary W. Campbell, Cole Goodman, Jerry R. Stewart, Joseph Herrmann, and Rick Deramus. Plaintiff's complaint contains seven (7) separate counts: breach of contract, intentional interference with contract or business expectancy, denial of due process under 42 U.S.C. § 1983, denial of due process under Ark. Code Ann. § 16-123-105, defamation, civil conspiracy, and age discrimination under Ark. Code Ann. § 21-3-203.

2. Various motions to dismiss have been filed by the defendants - and in the midst of the briefing on the motions to dismiss - the plaintiff filed the instant motions seeking to amend his complaint for the purpose of clarifying his alternative claims of employment by the City of Fort Smith.

Several defendants oppose the plaintiff's motion to amend, arguing that the court should not consider the motion until the motions to dismiss have been ruled upon.

3. The Court, having extensively reviewed all pending pleadings, now finds that the amended complaint may impact the arguments and should be filed prior to the ultimate consideration of the issues presented in the pending motions to dismiss.

The Court, therefore, finds that **Plaintiff's Motion to Permit Filing of First Amended Complaint (document #37)** and **Plaintiff's Amended Motion to Permit Filing of First Amended Complaint (document #44)** should be, and hereby are, **granted**. The plaintiff should file his amended pleading within **ten (10) days**.

The Court, further, finds that the following motions should be, and hereby are, **denied as moot**:

\* **Motion to Dismiss of Separate Defendants, City of Fort Smith, Arkansas, William Harding and Gary W. Campbell (document #2);**

\* **Motion to Dismiss of Kenneth Pyle (document #5);**

\* **Motion to Dismiss of the Separate Defendant, Cole Goodman (document #7); and**

\* **Motion to Substitute the United States for Individually Named Defendants William Strandell and John R. Dallas and to Dismiss the Complaint (document #30).**

After the filing of the amended complaint, the defendants are invited to re-file their motions to dismiss, as originally submitted, or in an amended fashion, whichever may be appropriate.

**IT IS SO ORDERED.**

/s/ Jimm Larry Hendren  
JIMM LARRY HENDREN  
UNITED STATES DISTRICT JUDGE